



Marital Rape in India: Need for Legal Recognition

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Received: 25 Sep 2023; Received in revised form: 23 Oct 2023; Accepted: 27 Oct 2023; Available online: 31 Oct 2023
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Abstract— Marital rape remains one of the most contested and under-recognised forms of sexual violence in India, largely due to the continued existence of a legal exception that excludes non-consensual sexual acts within marriage from the ambit of rape. This paper critically examines the need for legal recognition of marital rape through constitutional, socio-cultural, and human rights perspectives. It analyses the historical roots of the marital rape exception, prevailing patriarchal norms, and traditional perceptions of consent that have normalised sexual violence within marriage. The study further evaluates the existing legal framework, judicial responses, and comparative international practices, highlighting inconsistencies with constitutional guarantees of equality, dignity, and bodily autonomy. Drawing upon empirical data and evolving jurisprudence, the paper argues that non-criminalisation perpetuates gender inequality and denies married women effective legal protection. It concludes by advocating comprehensive legal reform, supported by safeguards, awareness, and institutional sensitisation, to align Indian law with constitutional morality and gender justice.



Keywords— Marital Rape, Criminalisation, Legal and Human Rights, Indian Penal Code.

I. INTRODUCTION

Marriage in a constitutional democracy cannot be a space where fundamental rights are suspended. The protection of dignity, bodily autonomy, and personal liberty must extend into the private sphere of family life, raising critical questions about the treatment of sexual violence within marriage under Indian law. Despite the constitutional commitment to equality and individual liberty, the legal framework governing sexual offences in India continues to reflect deeply embedded patriarchal assumptions that shield marital relationships from criminal scrutiny. This disjunction between constitutional values and criminal law reveals a persistent gap in the protection afforded to women within marriage.

Contemporary legal and human rights discourse has firmly established consent as the cornerstone of lawful sexual relations. Consent is now understood as free, informed, voluntary, and revocable at any time, placing bodily autonomy and sexual self-determination at the heart of personal liberty. However, Indian criminal law continues to retain a marital rape exception that effectively treats marriage as generating implied or permanent consent.

Such a presumption is incompatible with the constitutional understanding of dignity and autonomy, as well as with evolving jurisprudence that recognises individual agency irrespective of marital status. The continued legal immunity afforded to non-consensual sexual acts within marriage raises serious concerns regarding the State's obligation to protect women from violence occurring in the private domain.

Sexual violence within marriage has historically been normalised through patriarchal family structures, gendered power relations, and cultural expectations surrounding marital roles. Marriage is frequently idealised as a sacrosanct and private institution, within which the husband is positioned as the primary authority figure and the wife's sexual availability is socially presumed. These narratives obscure the reality that forced sexual relations within marriage result in significant physical, psychological, and emotional harm. Unlike sexual violence outside marriage, marital sexual abuse is often repetitive, prolonged, and reinforced by economic dependence and social pressures to preserve family honour and marital stability. These factors not only intensify the

harm suffered by survivors but also contribute to systematic underreporting and institutional invisibility.

Empirical evidence demonstrates that violence within marital relationships is both widespread and persistent. According to the National Family Health Survey (NFHS-5, 2019–21), 24.2 per cent of ever-married women aged 18–49 in India have experienced spousal violence, encompassing physical, sexual, or emotional abuse, at least once in their lifetime (IIPS & ICF, 2021). Sexual violence by husbands, while significantly underreported, constitutes an important component of this figure. The consistency of these findings across earlier rounds of the NFHS indicates that violence within marriage is structural rather than incidental, rooted in enduring inequalities of power and gender. These data underscore that marital sexual violence is not a marginal or exceptional phenomenon but a pervasive social problem requiring legal recognition and institutional response.

The international context further reinforces the urgency of reform. The World Health Organisation identifies intimate partner violence, including sexual violence, as a major public-health concern, estimating that nearly one in three women globally experience physical or sexual violence by an intimate partner during their lifetime (WHO, 2021). International human rights bodies increasingly regard marital rape as a violation of fundamental rights, including the rights to life, dignity, health, and freedom from cruel, inhuman, or degrading treatment. Against this backdrop, India's continued criminal-law exemption for marital rape appears increasingly misaligned with international human rights standards and the principles of constitutional morality. Addressing this legal inconsistency is therefore essential not only for advancing gender justice but also for fulfilling the constitutional promise of equality and dignity for all.

Conceptual Background

The conceptual foundation of the debate on marital rape lies in the transformation of how consent, marriage, and state responsibility are understood in modern constitutional democracies. Historically, the marital rape exception emerged from English common law, which treated a wife as legally subordinate to her husband and presumed that marriage entailed irrevocable sexual consent. This doctrine was absorbed into colonial Indian criminal law and continues to influence Section 375 of the Indian Penal Code, which defines rape but excludes sexual intercourse by a husband with his wife under specified conditions. This exception rests on outdated notions of marital unity and female subordination rather than on contemporary principles of equality and autonomy.

From a constitutional perspective, this exception creates a contradiction. Article 21 of the Constitution guarantees the right to life and personal liberty, which has been judicially interpreted to include dignity, bodily integrity, and privacy. The Supreme Court's recognition of decisional autonomy in matters of sexuality and personal relationships underscores that consent cannot be presumed or permanently surrendered. Similarly, Articles 14 and 15 mandate equality before the law and prohibit discrimination on the grounds of sex. Treating married women differently from unmarried women in cases of sexual violence raises serious concerns of unequal protection and gender-based discrimination.

Conceptually, recognising marital rape does not undermine the institution of marriage; rather, it redefines marriage as a relationship of equals based on mutual respect and consent. The idea that criminalising marital rape will destabilise families assumes that marital stability depends on women's silence and endurance of abuse. Such an assumption prioritises institutional preservation over individual rights. In contrast, modern legal thought emphasises that institutions derive legitimacy from their ability to protect the dignity and autonomy of their members.

Another important conceptual aspect is the public–private divide. Traditional legal frameworks treated the family as a private sphere immune from criminal law intervention. However, feminist legal scholarship has consistently shown that this divide enables systematic abuse by shielding perpetrators and denying victims access to justice. Domestic violence laws in India have already recognised that the home can be a site of serious rights violations. Extending this recognition to sexual violence within marriage is a logical progression rather than a radical departure.

The question of misuse is often raised in opposition to criminalisation. Conceptually, this concern must be addressed through procedural safeguards, rather than denying legal recognition. All criminal laws carry the possibility of misuse, yet this has not prevented the State from criminalising offences such as dowry harassment or domestic violence. The appropriate response lies in fair investigation, evidentiary standards, and judicial scrutiny—not in excluding an entire category of victims from legal protection.

Statistical data further support the conceptual argument for reform. NFHS-5 data show that less than 10% of women who experienced spousal violence sought help from formal institutions, including police or courts (IIPS & ICF, 2021). This reflects fear of social stigma, lack of faith in legal remedies, and absence of explicit criminal recognition of

marital sexual violence. Legal acknowledgement can play a crucial role in breaking this silence by affirming that forced sex within marriage is a violation, not a marital entitlement.

Meaning and Definition of Marital Rape

Marital rape refers to non-consensual sexual intercourse or sexual acts committed by a husband against his wife, where the absence of consent constitutes sexual violence, irrespective of the marital relationship. In contemporary legal theory, the defining element of rape is lack of consent, not the identity or status of the perpetrator.

Under Indian criminal law, rape is defined in Section 375 of the Indian Penal Code (IPC), which criminalises sexual intercourse without consent under specified circumstances. However, Exception 2 to Section 375 historically excluded sexual intercourse by a husband with his wife from the definition of rape, provided the wife was above a prescribed age (Government of India, IPC, 1860). This exception effectively means that Indian law does not recognise marital rape as a criminal offence, except in limited situations such as separation or when the wife is below the statutory age.

In contrast, international human rights law defines rape and sexual violence without reference to marital status. The United Nations Declaration on the Elimination of Violence against Women (1993) recognises marital rape as a form of violence against women and a violation of human rights (United Nations, 1993). Similarly, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) obligates States to eliminate violence against women in both public and private spheres, implicitly including sexual violence within marriage (CEDAW Committee, 1992).

Judicial interpretations in India have also gradually shifted toward a consent-centric understanding of sexual relations. The Supreme Court has repeatedly affirmed that bodily autonomy, dignity, and decisional privacy are integral to Article 21 of the Constitution, thereby challenging the logic of implied marital consent (*Justice K.S. Puttaswamy v. Union of India*, 2017). Although marital rape has not yet been fully criminalised, these constitutional interpretations weaken the legal basis of the marital rape exception.

Forms and Dimensions of Marital Rape

Marital rape is not a single, uniform act but manifests in multiple **forms and dimensions**, often shaped by power imbalance, economic dependence, and social conditioning.

Forced Sexual Intercourse

This is the most direct form, involving physical force, threats, or intimidation to compel sexual intercourse. It often occurs repeatedly and is normalised within marriage

due to societal expectations of sexual availability. The National Family Health Survey (NFHS-5, 2019–21) reports that 6.4% of ever-married women experienced sexual violence by their husband, a figure widely acknowledged to be underreported due to stigma and fear (IIPS & ICF, 2021).

Coercive Sex Without Physical Force

Marital rape may occur through emotional pressure, threats of abandonment, denial of financial support, or manipulation rather than overt violence. Such coercion still invalidates consent under modern legal standards. Studies indicate that women often submit to sexual acts to avoid conflict or violence, blurring the line between “consent” and compulsion (WHO, 2021).

Sexual Violence Linked with Domestic Abuse

Marital rape frequently coexists with physical and emotional violence. This dimension highlights marital rape as a structural issue rather than an isolated incident.

Reproductive and Health-Related Sexual Coercion

This includes forced sex intended to control reproduction, refusal to use contraception, or coercion during illness or pregnancy. Such acts directly violate women’s reproductive rights and bodily integrity. The WHO recognises reproductive coercion as a serious public-health concern associated with long-term physical and psychological harm (WHO, 2021).

II. REVIEW OF LITERATURE

Kallakuru & Tripathy (2018), in their article, provide a structured doctrinal and constitutional critique of India’s marital rape immunity, arguing that non-recognition conflicts with equality, dignity, and autonomy. It is relevant for building the core legal argument in a research paper because it discusses doctrinal inconsistencies, constitutional tensions, and comparative reasoning, while also anticipating counter-arguments around evidentiary issues and misuse. As a peer-reviewed law review contribution, it strengthens the academic foundation of a literature review section.

Agnes (2015) critically engages with public and policy narratives around gender laws in Flavia Agnes’ intervention in *Economic and Political Weekly*, highlighting how misinformation and social resistance shape legal reform debates. Her work is valuable to the marital rape literature because it situates criminalisation debates within patriarchal backlash, the politics of “misuse” arguments, and the structural silencing of women’s experiences in intimate spaces. The article

contributes a socio-legal lens that connects law reform to lived realities and public discourse.

Significance of the Study

The study “Marital Rape in India: Need for Legal Recognition” is significant for both legal scholarship and policy discourse as it addresses a critical gap in India’s criminal justice framework concerning sexual violence within marriage. By examining marital rape through constitutional, socio-legal, and human rights perspectives, the study contributes to a deeper understanding of how existing legal provisions fail to protect women’s bodily autonomy, dignity, and equality within the private sphere of marriage.

The research is particularly important in highlighting the disconnect between constitutional guarantees under Articles 14, 15, and 21 and the continued exclusion of marital rape from criminal recognition. It brings empirical relevance to the debate by engaging with authentic national and international data on spousal and intimate partner violence, thereby demonstrating that marital sexual violence is a widespread and systemic issue rather than an isolated occurrence.

Additionally, the study has practical significance for law reform and policymaking. It provides an informed basis for legislative reconsideration of the marital rape exception and offers insights into aligning domestic law with international human rights standards. By foregrounding consent, autonomy, and gender justice, the study seeks to influence judicial interpretation, academic debate, and public awareness, contributing to a more rights-based and equitable legal framework in India.

Objectives of the Study

- i. To critically evaluate the existing legal framework for marital rape in India.
- ii. To examine the need for legal recognition and reform for marital rape in India.

Historical and Socio-Cultural Context of Marital Rape in India

Understanding marital rape in India requires situating it within the country’s historical and socio-cultural framework, where marriage has traditionally been governed by patriarchal norms and deeply entrenched gender hierarchies. These structures have shaped perceptions of authority, sexuality, and consent within marriage, often legitimising women’s subordination and rendering sexual violence within marriage socially invisible.

Patriarchal Norms and the Institution of Marriage

Indian society has historically been organised around **patriarchal family systems**, in which men exercise control over economic resources, decision-making, and sexuality, while women are expected to conform to roles of obedience and sacrifice. Classical Hindu legal texts, customary practices, and later colonial interpretations reinforced the notion of male dominance within marriage, portraying the husband as the head of the household and the wife as dependent and duty-bound (Kane, 1968). Marriage was not merely a personal relationship but a socio-religious institution aimed at preserving lineage, property, and social order.

These patriarchal norms positioned women primarily as wives and mothers, with their sexuality regulated to ensure fidelity and legitimacy of heirs. The concept of a wife as her husband’s *ardhangini* (half-self) was often interpreted not as equality, but as relational subordination, where a woman’s identity and autonomy were subsumed within marriage (Agnes, 2011). Such cultural narratives normalised male sexual entitlement and discouraged recognition of women’s sexual agency.

Colonial legal frameworks further entrenched these norms. British administrators, while codifying personal and criminal laws, retained many patriarchal assumptions to avoid disrupting “native” customs. The marital rape exception in the Indian Penal Code, derived from English common law, reflected the belief that marriage implied irrevocable consent to sexual relations (Dhavan, 2011). This legal position aligned with prevailing social attitudes that treated sexual relations within marriage as a husband’s right rather than a mutual act requiring consent.

Even in the post-independence period, marriage continued to be idealised as a private and sacrosanct institution. Social expectations emphasised marital harmony, female chastity, and endurance, often discouraging women from questioning or resisting abuse. These norms have contributed to the persistent underreporting of sexual violence within marriage and the reluctance of legal institutions to intervene.

Consent Within Marriage: Traditional Perceptions

Traditional perceptions of consent within marriage in India have been shaped by the assumption that a woman’s consent is permanently granted at the time of marriage. Sexual relations were viewed as a marital duty rather than a matter of individual choice. This understanding left little room for recognising refusal, negotiation, or withdrawal of consent, particularly for wives who were economically and socially dependent on their husbands (Agnes, 2011).

Anthropological and sociological studies indicate that many women internalise these norms, perceiving sexual compliance as necessary to maintain marital stability and

avoid conflict. The distinction between consensual sex and coerced sex becomes blurred when refusal is met with emotional pressure, threats, or violence. Such coercion, while inconsistent with modern legal definitions of consent, has historically been normalised within marital relationships.

The impact of these perceptions is reflected in empirical data. The National Family Health Survey (NFHS-5, 2019–21) reports that only a small proportion of women who experience spousal violence seek help from formal institutions, such as police or courts, indicating limited recognition of marital sexual violence as a legal wrong (IIPS & ICF, 2021). Cultural stigma, fear of social ostracism, and the prioritisation of family honour discourage women from asserting sexual autonomy within marriage.

Traditional perceptions of consent are also reinforced by gendered moral codes that value female chastity and silence. Women who speak about sexual abuse within marriage risk being blamed for disrupting familial harmony. As feminist scholars argue, this cultural silencing sustains a hierarchy where male desire is legitimised, and female resistance is delegitimised (Baxi, 2013).

Changing Socio-Cultural Realities

While patriarchal norms remain influential, socio-cultural attitudes toward marriage and consent are gradually changing. Increased female education, economic participation, and exposure to constitutional rights discourse have begun to challenge traditional assumptions. Judicial recognition of privacy, dignity, and autonomy under Article 21 has further destabilised the notion of irrevocable marital consent. However, these shifts coexist with deeply rooted cultural practices, creating tension between evolving legal values and entrenched social norms.

Legal Framework Governing Marital Rape in India

The legal position of marital rape in India is shaped by a combination of criminal law provisions and family law mechanisms. While Indian law recognises sexual violence as a serious offence, it simultaneously retains exceptions that exclude non-consensual sexual acts within marriage from the scope of criminal rape. This duality reflects the tension between constitutional guarantees of equality and dignity and the traditional legal protection accorded to marriage as a private institution.

Exception under Section 375 of the Indian Penal Code

Section 375 of the Indian Penal Code, 1860 (IPC) defines rape based on the absence of consent and enumerates circumstances under which sexual intercourse amounts to

rape. However, Exception 2 to Section 375 provides that sexual intercourse by a man with his own wife, provided the wife is above the prescribed age, does not constitute rape (Government of India, 1860). This exception effectively excludes married women from the protection available to unmarried women against sexual assault by their partners.

The marital rape exception is rooted in colonial common law, which viewed marriage as implying irrevocable consent to sexual relations. This notion has been increasingly criticised as incompatible with constitutional principles of equality (Article 14) and personal liberty and dignity (Article 21). Judicial developments recognising privacy, bodily autonomy, and decisional freedom—particularly after *Justice K.S. Puttaswamy v. Union of India* (2017) have further weakened the normative justification for this exception. Nevertheless, despite constitutional reinterpretation of individual rights, the exception continues to remain part of substantive criminal law, creating a legal vacuum for married women facing sexual violence within marriage.

Related Provisions under Criminal Law

Although marital rape is not recognised as an offence under Section 375 IPC, certain criminal law provisions offer limited and indirect protection. Section 498A IPC criminalises cruelty by a husband or his relatives, which includes conduct likely to cause grave injury to a woman's mental or physical health. Courts have occasionally interpreted sexual abuse within marriage as falling under "cruelty," but this provision does not directly acknowledge sexual violence as rape and carries a different evidentiary and punitive framework (Agnes, 2015).

Additionally, offences such as Section 323 (voluntarily causing hurt) and Section 506 (criminal intimidation) may be invoked where physical injury or threats accompany sexual coercion. However, these provisions fragment the experience of sexual violence and fail to recognise the specific harm caused by non-consensual sexual intercourse. As a result, criminal law responses remain inadequate and largely symbolic in addressing marital sexual abuse.

Family Law and Civil Remedies

In the absence of criminal recognition, marital rape is more commonly addressed through civil and family law remedies. The Protection of Women from Domestic Violence Act, 2005 (PWDVA) provides a broader definition of domestic violence that includes sexual abuse within domestic relationships. Under this Act, survivors can seek protection orders, residence rights, and monetary relief (Government of India, 2005). While the PWDVA acknowledges sexual violence, it is primarily a civil law

mechanism focused on protection rather than criminal accountability.

Family law statutes governing divorce and judicial separation also recognise sexual cruelty as a ground for matrimonial relief. Courts have accepted forced sexual acts as a form of cruelty, justifying divorce. However, these remedies place the burden on women to exit marriage rather than addressing the criminality of the act itself. Consequently, family law responses tend to prioritise marital breakdown over justice and accountability.

Constitutional Perspectives on Marital Rape in India

The constitutional debate on marital rape in India is centrally concerned with the protection of life, dignity, bodily autonomy, and equality. The continued exclusion of marital rape from the ambit of criminal law raises serious constitutional concerns, particularly in relation to Article 21 and Articles 14 and 15 of the Constitution of India. Judicial interpretation over the last decade has significantly expanded the scope of these provisions, strengthening the case for legal recognition of marital rape.

Right to Life, Dignity, and Bodily Autonomy (Article 21)

Article 21 of the Constitution guarantees the right to life and personal liberty, which the Supreme Court has consistently interpreted to include human dignity, bodily integrity, and decisional autonomy. In *Maneka Gandhi v. Union of India* (1978), the Court held that the right to life is not merely animal existence but a life with dignity. This interpretation has been further expanded in subsequent cases to encompass autonomy over one's body and intimate decisions.

A decisive development occurred in *Justice K.S. Puttaswamy v. Union of India* (2017), where the Supreme Court recognised the right to privacy as intrinsic to Article 21. The judgment explicitly affirmed that bodily autonomy and sexual agency are core aspects of personal liberty, applicable irrespective of gender or marital status. Forced sexual relations within marriage, therefore, directly violate a woman's right to bodily integrity and dignity. The marital rape exception, by denying married women legal protection against non-consensual sex, creates a constitutionally impermissible situation where Article 21 rights are effectively suspended within marriage.

Equality Before Law and Non-Discrimination (Articles 14 & 15)

Article 14 guarantees equality before law and equal protection of laws, while Article 15 prohibits discrimination on the grounds of sex. The marital rape exception creates an unreasonable classification between married and unmarried women by denying the former protection against rape solely on the basis of marital status.

Such classification lacks a rational nexus with any legitimate state objective and therefore fails the test of equality under Article 14.

In *Anuj Garg v. Hotel Association of India* (2008), the Supreme Court ruled that laws based on gender stereotypes are unconstitutional. The marital rape exception rests on stereotypical assumptions that wives are perpetually consenting and sexually subordinate to husbands. This directly conflicts with Article 15's mandate against sex-based discrimination.

From a constitutional perspective, the continued exclusion of marital rape represents a denial of substantive equality. It treats married women as a separate and lesser class of citizens whose sexual autonomy is subordinated to marital status. Such legal treatment is inconsistent with evolving constitutional morality and the judiciary's emphasis on gender justice and individual rights.

Judicial Responses and Case Law Analysis

Supreme Court interpretations

Indian constitutional courts have increasingly framed marital consent through the lens of dignity, autonomy, and equality, even though marital rape is not yet fully criminalised in India. A major Supreme Court milestone is *Independent Thought v. Union of India* (2017), where the Court read down Exception 2 to Section 375 IPC to ensure that sexual intercourse with a wife aged 15–18 years is treated as rape, aligning the law with child-protection norms and constitutional rights. The Court noted that the exception effectively erased consent for girls in this age group and undermined their bodily integrity (*Independent Thought vs Union of India*, 2017). Although limited to child marriage, the reasoning strengthened the broader constitutional argument that marriage cannot override autonomy.

High Court interpretations

High Courts have significantly shaped contemporary discourse by directly engaging with the marital rape exception (MRE). In Karnataka, the High Court (Justice M. Nagaprasanna) held that the MRE cannot be used as a shield to prevent prosecution when allegations disclose sexual assault and cruelty within marriage, emphasising that a wife's autonomy and equality cannot be subordinated to marital status. This decision is widely discussed as a strong judicial signal that "marriage" cannot legitimise sexual violence.

In Delhi, the constitutional challenge in RIT Foundation/connected matters produced a landmark split verdict (May 2022). Justice Rajiv Shakdher held the MRE unconstitutional for violating the principles of equality and bodily autonomy; Justice C. Hari Shankar upheld it,

reasoning that striking it down would require legislative judgment and raise concerns about doctrinal boundaries. The split underscores a judiciary divided between a rights-forward approach and institutional deference to Parliament.

Evolving judicial attitudes toward marital consent

Across these decisions, a notable shift is the transition from status-based consent (marriage implies consent) to consent as a continuing, contextual, and revocable process. Even when courts stop short of declaring marital rape criminal per se, they increasingly reject the premise that marriage suspends constitutional guarantees. The Delhi split verdict is especially important because both opinions treat consent as central, disagreeing only on whether the Constitution requires immediate invalidation of the exception or whether change must come through legislation (Farhan vs State & Anr, 2022)

Empirical context and its influence

Judicial attention to marital sexual abuse is also shaped by the scale of intimate partner violence. NFHS-5 (2019–21) reports that 24.2% of ever-married women (18–49 years) have experienced spousal violence (physical/sexual/emotional) at least once, indicating that violence in marriage is widespread and structural rather than rare. This empirical reality strengthens constitutional arguments that legal immunities for marital sexual violence create a serious protection gap.

III. INTERNATIONAL HUMAN RIGHTS STANDARDS

International law increasingly treats sexual violence within marriage as a human-rights violation, rejecting the idea that marital status can dilute consent. The UN Declaration on the Elimination of Violence against Women (DEVAW), 1993, defines violence against women broadly to include sexual harm occurring in both public and private life, and calls on States to exercise due diligence to prevent and punish such violence (United Nations Human Rights Commission, 2023). The CEDAW Committee has also clarified that gender-based violence is a form of discrimination, requiring States to adopt effective legal and policy measures against violence in intimate relationships (UN Refugee Agency, 1992). From a public-health perspective, the WHO estimates that about 736 million women—nearly 1 in 3 globally—experience physical and/or sexual violence by an intimate partner or sexual violence by a non-partner in their lifetime, underscoring the systemic nature of partner violence and the need for legal protection inside the home (WHO, 2021)

Comparative Legal Position in Other Countries

Many jurisdictions have moved toward criminalising marital rape either by abolishing spousal exemptions or by judicially recognising that marriage does not imply irrevocable consent. In the United Kingdom, the House of Lords in *R v R* (1991) held that the marital rape exemption was no longer a defence, effectively recognising that a wife can withdraw consent and that a husband may be prosecuted for rape. In the United States, courts and legislatures have progressively removed spousal exemptions. A leading rights-based judgment is *People v. Liberta* (1984), which struck down New York's marital exemption as unconstitutional and affirmed equal bodily control for married and unmarried women (*People v. Liberta*, 1984).

Despite progress, legal gaps remain worldwide. UN Women notes that only 77 out of 185 countries had explicit legislation criminalising marital rape (as of June 2017), highlighting that non-recognition persists as a significant global legal deficit (UN Women, 2020).

Arguments for Criminalisation of Marital Rape

The demand for criminalisation of marital rape in India is grounded in constitutional values, human rights principles, and empirical evidence on the harms of sexual violence. Recognising marital rape as a criminal offence is essential to ensure substantive gender justice and align the law with contemporary understandings of consent, dignity, and autonomy.

Human Rights and Gender Justice

Criminalisation of marital rape is fundamentally a human rights imperative. International human rights law recognises sexual violence, including within marriage, as a violation of the rights to life, dignity, equality, and freedom from cruel or degrading treatment (United Nations, 1993). In India, the marital rape exception creates a legal distinction between married and unmarried women, denying married women equal protection of law. This undermines substantive equality and reinforces patriarchal assumptions that a wife's body is subject to marital entitlement.

From a gender justice perspective, non-criminalisation perpetuates structural inequality by legitimising male dominance within marriage. Feminist legal scholarship argues that denying criminal recognition to marital rape signals societal acceptance of women's sexual subordination, thereby weakening constitutional commitments to equality and dignity (Agnes, 2015). Criminalisation would affirm women's status as autonomous rights-bearing individuals within marriage, not dependents whose consent is presumed.

Public Health and Psychological Impact

Marital rape has severe public health and psychological consequences. Studies by the World Health Organization (WHO) show that women subjected to sexual violence by intimate partners are significantly more likely to experience depression, anxiety, post-traumatic stress disorder (PTSD), sexually transmitted infections, and reproductive health complications (WHO, 2021).

Non-recognition of marital rape exacerbates these harms by limiting access to justice, healthcare, and psychological support. Survivors often internalise abuse as a marital obligation, leading to prolonged exposure and cumulative trauma. Criminalisation would not only provide legal recourse but also serve an important symbolic and preventive function, signalling that forced sex within marriage is unacceptable and harmful.

Marriage Versus Consent

A central argument against criminalisation is the perceived sanctity of marriage. However, modern constitutional thought rejects the idea that marriage overrides individual rights. Consent is not a one-time contract but a continuous, revocable agreement, applicable to all sexual relations irrespective of marital status. Treating marriage as permanent consent contradicts constitutional jurisprudence recognising bodily autonomy and decisional freedom under Article 21.

Criminalising marital rape does not undermine marriage; rather, it redefines marriage as a partnership based on mutual respect and consent. As comparative legal developments demonstrate, jurisdictions that have criminalised marital rape have not witnessed erosion of marital institutions. Instead, they have strengthened the principle that marriage cannot be a licence for violence.

Arguments Against Criminalisation of Marital Rape and Critical Evaluation

Debates opposing the criminalisation of marital rape in India primarily revolve around concerns of misuse of law and the perceived impact on the institution of marriage. While these arguments merit consideration, they require careful critical evaluation in light of constitutional principles and empirical evidence.

Misuse Concerns

A frequently raised argument against criminalisation is the potential **misuse of criminal law**. Critics contend that recognising marital rape as an offence may lead to false or exaggerated complaints, particularly in matrimonial disputes, and could be used as a tool for harassment (Agnes, 2015). This concern is often linked to experiences surrounding Section 498A IPC, where allegations of misuse have shaped public and judicial discourse.

However, the misuse argument is not unique to marital rape and applies to most criminal offences. The Supreme Court has repeatedly held that the possibility of misuse **cannot be a valid ground to deny legal protection** to genuine victims (*State of Punjab v. Gurmit Singh*, 1996). Criminal law already incorporates safeguards such as the presumption of innocence, burden of proof, judicial scrutiny, and procedural fairness. Empirical studies also indicate that **underreporting**, rather than overreporting, remains the dominant issue in cases of sexual and domestic violence (IIPS & ICF, 2021). Thus, misuse concerns, while relevant, can be addressed through procedural safeguards rather than outright exclusion of marital rape from criminal law.

Impact on the Institution of Marriage

Another argument suggests that criminalising marital rape would destabilise the **institution of marriage**, undermine marital harmony and increase divorce rates. This view assumes that marriage requires legal immunity for sexual coercion to function smoothly. Feminist scholars challenge this assumption, arguing that marriage cannot be preserved at the cost of women's dignity and bodily autonomy (Baxi, 2013).

Comparative legal experience weakens this argument. Countries such as the United Kingdom and the United States criminalised marital rape decades ago without evidence of institutional collapse of marriage. Instead, these reforms reinforced the idea that marriage is a relationship of equals based on mutual consent. From a constitutional perspective, protecting marriage as an institution cannot justify denying fundamental rights within it.

Challenges in Legal Recognition of Marital Rape in India

Despite growing constitutional, judicial, and international support for recognising marital rape as a criminal offence, several **social and institutional challenges** continue to impede legal reform. These challenges operate at both societal and systemic levels, affecting reporting, enforcement, and effective implementation of the law.

Social Stigma and Underreporting

Cultural Silence and Patriarchal Norms

One of the most significant barriers to legal recognition of marital rape is deep-rooted **social stigma**. Marriage in India is traditionally viewed as a private and sacrosanct institution, where sexual relations are considered a marital duty rather than a matter of consent. Women who speak out against sexual violence within marriage often face social condemnation, victim-blaming, and pressure to maintain family honour. These patriarchal norms

discourage disclosure and reinforce silence around marital sexual abuse (Agnes, 2015).

Fear of Social and Economic Consequences

Women's reluctance to report marital rape is also linked to **economic dependence**, fear of marital breakdown, loss of social support, and concerns regarding children's welfare. Reporting sexual violence against a husband may result in social ostracism or retaliation, making legal recourse appear risky and inaccessible. As a result, survivors often normalise abuse or seek informal coping mechanisms rather than approaching formal institutions.

IV. ENFORCEMENT AND IMPLEMENTATION ISSUES

Evidentiary and Procedural Challenges

Even if marital rape were criminalised, enforcement would pose significant challenges. Sexual violence within marriage typically occurs in private spaces without witnesses, making evidence collection difficult. Concerns are often raised about false complaints and proof standards; however, these challenges are not unique to marital rape and exist in all sexual offence cases. Courts already rely on survivor testimony, medical evidence, and circumstantial proof, demonstrating that procedural safeguards can address evidentiary concerns (Baxi, 2013).

Institutional Sensitivity and Capacity

Another major challenge is the lack of sensitisation among law enforcement and judicial officers. Police reluctance to register complaints, patriarchal attitudes, and inadequate training can undermine implementation. Without gender-sensitive investigation protocols and survivor-centred approaches, criminalisation risks remaining symbolic rather than effective.

Coordination with Existing Legal Frameworks

Marital rape recognition would also require harmonisation with existing criminal and family laws, including the **Protection of Women from Domestic Violence Act, 2005**. Overlapping jurisdictions, delays, and inconsistent remedies could weaken enforcement unless supported by clear guidelines and institutional coordination.

Need for Legal Reform in India

The continued exclusion of marital rape from the ambit of criminal law in India has generated sustained constitutional, judicial, and scholarly concern. Legal reform is necessary to address the inconsistency between criminal law provisions and evolving constitutional values centred on dignity, equality, and autonomy.

Reconsideration of the Marital Rape Exception

At the core of the reform debate lies **Exception 2 to Section 375 of the Indian Penal Code**, which excludes non-consensual sexual intercourse by a husband with his wife (above the prescribed age) from the definition of rape (Government of India, 1860). This exception is a colonial legacy derived from English common law, premised on the now-discredited notion that marriage implies irrevocable consent. In contemporary constitutional democracies, such presumptions are widely rejected as incompatible with individual autonomy.

Judicial developments in India have already weakened the doctrinal basis of this exception. In *Independent Thought v. Union of India* (2017), the Supreme Court read down the exception to protect minors, holding that marriage cannot override a girl's bodily integrity and consent. While limited in scope, the reasoning clearly affirms that **marital status cannot extinguish sexual autonomy**. Moreover, High Courts have increasingly questioned the constitutionality of the exception, emphasising that it creates unjustified discrimination between married and unmarried women.

Law reform bodies have also acknowledged the problem. The **Justice J.S. Verma Committee (2013)** unequivocally recommended the removal of the marital rape exception, arguing that the law must focus on the absence of consent rather than the marital relationship. The Committee stressed that retaining the exception violates women's rights to equality and dignity and undermines the credibility of the sexual offence law.

Alignment with Constitutional Morality

Legal reform is also essential to align criminal law with constitutional morality, a concept emphasised by the Supreme Court to ensure that laws reflect constitutional values rather than social prejudices. Constitutional morality prioritises individual rights, substantive equality, and human dignity over traditional or majoritarian norms (*Navtej Singh Johar v. Union of India*, 2018).

Article 21 of the Constitution guarantees the right to life and personal liberty, which includes bodily autonomy, privacy, and sexual self-determination (*Justice K.S. Puttaswamy v. Union of India*, 2017). The marital rape exception effectively suspends these rights within marriage, creating a constitutionally impermissible private sphere where violence is immunised. Similarly, Articles 14 and 15 prohibit discrimination and require equal protection of the law. Denying married women protection against rape solely on the basis of marital status violates substantive equality and reinforces gender stereotypes.

Suggestions and Way Forward

Legislative Reforms

1. **Remove the marital rape exception under Section 375 IPC** to ensure that non-consensual sexual acts are criminalised irrespective of marital status.
2. **Adopt a consent-centric definition of sexual offences**, explicitly recognising consent as free, informed, voluntary, and revocable at any time.
3. **Incorporate graded penalties and proportional sentencing**, allowing courts to distinguish severity while ensuring accountability.
4. **Provide clear procedural safeguards** (e.g., preliminary inquiry, judicial oversight) to address concerns of misuse without diluting victims' rights.
5. **Harmonise criminal law with civil remedies** under the Protection of Women from Domestic Violence Act, 2005, to avoid overlap and ensure coherent relief.
6. **Amend evidentiary rules** to reinforce survivor-centred standards, recognising testimony and circumstantial evidence in private-space offences.

Awareness, Sensitisation, and Support Systems

7. **Nationwide public awareness campaigns** to reframe marriage as a partnership based on mutual consent and equality.
8. **Mandatory gender-sensitisation training** for police, prosecutors, and judges on consent, trauma-informed practices, and survivor rights.
9. **Strengthen first-response mechanisms**, including women-friendly police desks and rapid referral to medical and legal aid.
10. **Expand access to counselling and mental-health services** for survivors, with confidentiality and long-term support.
11. **Ensure economic and shelter support**, including safe housing and financial assistance, to reduce survivors' dependence on abusive spouses.
12. **Integrate sexual and reproductive health services** to address the medical consequences of marital sexual violence.

Institutional and Community Measures

13. **Improve data collection and research**, disaggregating marital sexual violence in national surveys to inform policy.
14. **Engage community institutions and civil society** (panchayats, NGOs, faith leaders) to challenge stigma and encourage reporting.

15. **Establish monitoring and review mechanisms** to evaluate implementation, ensure accountability, and adapt reforms based on outcomes.

Together, these steps provide a balanced path forward—combining legal reform with social change—to ensure protection, accountability, and dignity within marriage.

V. CONCLUSION

The issue of marital rape in India exposes a fundamental tension between entrenched social norms and evolving constitutional values. This study has demonstrated that the continued exclusion of marital rape from the ambit of criminal law is rooted in patriarchal assumptions that treat marriage as a private domain immune from legal scrutiny and presume irrevocable consent on the part of wives. Such assumptions are increasingly untenable in light of constitutional jurisprudence that affirms dignity, bodily autonomy, privacy, and substantive equality as core components of individual rights. By denying married women protection against non-consensual sexual acts, the existing legal framework creates an unjustified and discriminatory distinction that is incompatible with Articles 14, 15, and 21 of the Constitution.

Empirical evidence further underscores the urgency of reform. National and international data reveal that sexual and intimate partner violence within marriage is widespread, underreported, and structurally embedded, resulting in severe physical, psychological, and social harm. The absence of criminal recognition not only denies survivors access to justice but also reinforces social silence and normalisation of abuse. Judicial responses in recent years indicate a gradual shift toward a consent-centric and rights-based understanding of marital relations, yet the lack of definitive legislative reform continues to perpetuate legal uncertainty and unequal protection.

Ultimately, recognising marital rape as a criminal offence is not about undermining the institution of marriage but about redefining it in accordance with constitutional morality. Legal reform, accompanied by robust safeguards, awareness initiatives, and survivor support systems, is essential to ensure that marriage does not operate as a site of exclusion from fundamental rights. Aligning criminal law with constitutional values would mark a decisive step toward gender justice, reaffirming that consent and dignity remain inviolable, irrespective of marital status.

REFERENCES

- [1] Agnes, F. (2011). *Family Law: Volume 1: Family Laws and Constitutional Claims*. Oxford University Press.

- [2] Agnes, F. (2015). Section 498A, marital rape and adverse propaganda. *Economic and Political Weekly*, 12–15.
- [3] Baxi, P. (2013). *Public secrets of law: Rape trials in India*. Oxford University Press.
- [4] Dhavan, R. (2011). *The law of contempt and constitutional culture in India*. Centre for the Study of Developing Societies. <https://www.csd.s.in>
- [5] Kallakuru, R. R., & Tripathy, P. (2018). Criminalisation of marital rape in India. *NUJS Law Review*, 11(1). <https://nujlawreview.org/wp-content/uploads/2018/01/11-%E2%80%931-%E2%80%93Raveena-and-Pradyumna.pdf>
- [6] Kane, P. V. (1968). *History of Dharmasastra: Ancient and medieval religious and civil law in India*.
- [7] *Anuj Garg v. Hotel Association of India*, (2008).
- [8] *Maneka Gandhi v. Union of India*, (1978).
- [9] *Navtej Singh Johar v. Union of India*, (2018).
- [10] *Justice K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1.
- [11] Government of India. (1860/updated). *Indian Penal Code, Section 375 (Rape)*. India Code.
- [12] International Institute for Population Sciences (IIPS) & ICF. (2021). *National Family Health Survey (NFHS-5) 2019–21: India (FR375)*. DHS Program.
- [13] The Hindu Centre. (2021). NFHS-5 Phase II: Key indicators (Gender-based violence table includes “ever experienced spousal violence”).
- [14] World Health Organization. (2021). *Violence against women prevalence estimates, 2018*. <https://www.who.int/publications/i/item/9789240022256>.
- [15] [Independent Thought vs Union Of India on 11 October, 2017](https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-elimination-violence-against-women)
- [16] <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-elimination-violence-against-women>
- [17] [Declaration on the Elimination of Violence against Women | OHCHR](https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-elimination-violence-against-women)
- [18] [Devastatingly pervasive: 1 in 3 women globally experience violence](https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-elimination-violence-against-women)
- [19] <https://www.law.cornell.edu/sites/www.law.cornell.edu/files/women-and-justice/R-v-R.pdf>
- [20] [https://www.law.cornell.edu/gender-justice/resource/people v. liberta](https://www.law.cornell.edu/gender-justice/resource/people.v.liberta)
- [21] [Ad campaign: A spotlight on legal gaps to end violence against women | UN Women – Asia-Pacific](https://www.unwomen.org/en/news/stories/2021/10/ad-campaign-a-spotlight-on-legal-gaps-to-end-violence-against-women)